

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ELIJAH DOUGLAS ROGERS,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 3:19-cv-00503-MMD-CSD

ORDER

Pro se Plaintiff Elijah Douglas Rogers brings this action under 42 U.S.C. § 1983 regarding incidents which took place while he was incarcerated in the custody of the Nevada Department of Corrections. (ECF No. 11.) Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Craig S. Denney (ECF No. 40), recommending the Court dismiss this action with prejudice for failure to prosecute and deny Defendants’ pending summary judgment motion (ECF No. 31) as moot. Rogers had until February 21, 2022, to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R, and will dismiss this case.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory

1 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no
2 clear error on the face of the record in order to accept the recommendation.”).

3 Because there is no objection, the Court need not conduct de novo review, and is
4 satisfied Judge Denney did not clearly err. Here, Judge Denney recommends this action
5 should be dismissed with prejudice because Rogers has failed to continue prosecuting
6 his claims. (ECF No. 40 at 2.) After Defendants filed their motion for summary judgment
7 in December 2021, a notice was issued that Rogers had been discharged from prison.
8 (ECF No. 32.) The Court issued a minute order on January 5, 2021, directing Rogers to
9 update his address in accordance with Local Rule IA 3-1. (ECF No. 35.) Rogers never
10 updated his address, filed a response to Defendants’ motion for summary judgment, or
11 otherwise responded to the Court’s orders. Judge Denney applied the five-part test in
12 *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1998), and found the factors favor dismissal
13 and that a lesser sanction would be ineffective, as the Court has no means of contacting
14 Rogers. The Court therefore agrees with Judge Denney that this action should be
15 dismissed with prejudice for failure to prosecute. See Fed. R. Civ. P. 41(b). Having
16 reviewed the R&R and the record in this case, the Court will adopt the R&R in full.

17 It is therefore ordered that Judge Denney’s Report and Recommendation (ECF
18 No. 40) is accepted and adopted in full.

19 It is further ordered that this action is dismissed with prejudice.

20 It is further ordered that Defendants’ motion for summary judgment (ECF No. 31)
21 is denied as moot.

22 The Clerk of Court is directed to enter judgment accordingly and close this case.

23 DATED THIS 24th Day of February 2022.

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26 
27 MIRANDA M. DU
28 CHIEF UNITED STATES DISTRICT JUDGE